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IN THE

# Supreme Court of the United States

October Term, 1965

No. 88

In the Matter of Disciplinary Proceedings Against NEIL S. MACKAY, an Attorney at Law,

*Petitioner.*

**On Petition for Writ of Certiorari to the Supreme Court of the State of Alaska.**

## PETITION FOR REHEARING.

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No. 88
(Rehearing)

**Errata.**

Index — Schware v. Board of Bar Examiners, 353 U.S. 232, in place of 303 U.S. 232.

p. 1 — fourth line from bottom should read (1957), 353 U.S. 232, in place of 303 U.S. 232.

p. 2 — third line from top, word *acquired* should be *acquitted*.

## SUBJECT INDEX


| | Page |
|---|---|
| Grounds for rehearing | 1 |
| Conclusion | 4 |


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## TABLE OF AUTHORITIES CITED

### Cases


| | |
|---|---|
| Douglas v. Alabama, 380 U.S. 415 | 2, 3 |
| Konigsberg v. State Bar of California, 353 U.S. 252 | 1, 2, 3, 4 |
| Pointer v. Texas, 380 U.S. 400 | 2, 3 |
| Schware v. Board of Bar Examiners, 303 U.S. 232 | 1, 2, 3, 4 |


### Statute


| | |
|---|---|
| United States Constitution, Fourteenth Amendment | 2 |

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## PETITION FOR REHEARING.

Petitioner presents its petition for a rehearing of this Court's order dated June 20, 1966 denying the petition for a Writ of Certiorari to the Supreme Court of the State of Alaska, and, in support thereof, respectfully shows:

### Grounds for Rehearing

This Court should re-examine the decision of the Supreme Court of the State of Alaska which excludes the petitioner from the practice of law in the context of this Court's decisions in *Schware v. Board of Bar Examiners* (1957), 303 U.S. 232, and *Konigsberg v. State Bar of California* (1957), 353 U.S. 252. The applicability of those decisions is a substantial ground which has not been previously presented to this Court.

In this case the Supreme Court of the State of Alaska was unable to obtain a certified record of evidence taken at the hearing in which the petitioner was acquired. That Court did not initiate new charges against the petitioner who is an attorney. The Court then made its decision excluding the petitioner from the practice of law without notice to him. Petitioner, therefore, has not been confronted with any witnesses. Consequently he has had no opportunity for cross-examination. Accordingly, the petitioner's suspension from the practice of law by the Supreme Court of the State of Alaska has deprived the petitioner of due process of law.

This Court recognizes the right to confrontation as indispensable to due process in state criminal cases (*Pointer v. Texas* (1965), 380 U.S. 400; *Douglas v. Alabama* (1965), 380 U.S. 415). Moreover, this Court has granted certiorari and reversed state court decisions where attorneys have been excluded from the practice of law in state proceedings when there has been a deprival of due process. In *Schware v. Board of Bar Examiners* (*supra*) and *Konigsberg v. State Bar of California* (*supra*), this Court held that the petitioners' exclusions from the practice of law raised issues under the Fourteenth Amendment. The petitioners had been disqualified by state bar committees after hearings concerning their moral character. This Court held that the committees' findings were so arbitrary that they deprived the petitioners of due process under the Fourteenth Amendment.

In *Schware v. Board of Bar Examiners* (*supra*), this Court stated at page 237:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment."

The failure of the Supreme Court of the State of Alaska to give notice and permit the petitioner to cross-examine witnesses, as shown here, deprived petitioner of due process as it did to the attorneys in *Schware* and *Konigsberg*.

Furthermore, in *Pointer* and *Douglas* this Court held that the petitioners' right to confrontation and cross-examination was an indispensable requirement of due process:

> "There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law. . . ." (*Pointer v. Texas* (*supra*), at p. 405).

This right is equally cogent in an attorney's disciplinary proceeding. This Court recognized the necessity of due process guarantees in state disciplinary proceedings in *Konigsberg*, at p. 255:

> "While this is not a criminal case, its consequences for Konigsberg take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer."

The petitioner presents facts showing a deprivation of his opportunity of confrontation and cross-examina-

tion by the Supreme Court of the State of Alaska at the time that Court made its determination to exclude him from the practice of law. This petition should be granted and the writ issued after further consideration because the deprivation of due process raised here is as vital and evident as the deprivation incurred by the attorney petitioners in *Schware* and *Konigsberg*.

## Conclusion.

The petitioner urgently requests that this petition for a rehearing be granted so that this Court may consider the applicability of due process requirements to attorney disciplinary proceedings as defined by this Court in *Schware* and *Konigsberg*.

Respectfully submitted,

JOSEPH A. BALL,
*Attorney for Petitioner.*

## Certificate of Counsel.

I, JOSEPH A. BALL, counsel for the above named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and it is restricted to the grounds specified above.

JOSEPH A. BALL,
*Attorney for Petitioner.*